



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/172721

PRELIMINARY RECITALS

Pursuant to a petition filed March 11, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Barron County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on April 22, 2016, at Barron, Wisconsin.

The issue for determination is whether the department may intercept the petitioner's income tax refund to recover an overpayment of FoodShare.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By:

Barron County Department of Human Services
Courthouse Room 338
330 E Lasalle Ave
Barron, WI 54812

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # 4 [REDACTED]) is a resident of Minnesota. He resided in Wisconsin when he received the FoodShare that Wisconsin now seeks to recover.

2. The department notified the petitioner on November 3, 2014, that he was overpaid \$3,987.88 in FoodShare and must repay that amount. The notice informed him that he had 90 days to appeal that decision. That notice was not returned to the department.
3. The petitioner never appealed the FoodShare overpayment claim.
4. On May 15, 2015, the department notified the petitioner that it intended to intercept his income tax refund to recover the overpayment of FoodShare mentioned above. The notice indicated that he had 30 days to appeal.
5. The petitioner's only appeal in the matter was filed on March 11, 2015.
6. The petitioner was over 18 years old when the underlying appeal occurred.

DISCUSSION

State FoodShare agencies must “establish a claim against any household that has received more [FoodShare] benefits than it is entitled to receive.” 7 CFR § 273.18(a). Those responsible for paying an overpayment include “[e]ach person who was an adult member of the household when the overpayment...occurred. 7 CFR § 273.18(a)(4)(i). The department may recover an overpayment by intercepting a person's income tax refund. At least annually, the Department of Workforce Development must certify to the Department of Revenue the amounts it has determined it may recover because of an overissuance of food stamp benefits. Wis. Stat. § 49.85.

The county agency notified the petitioner on November 3, 2014, that it intended to recover a \$3,987.88 overpayment of FoodShare that allegedly occurred from August 13, 2013, through January 31, 2014. At that time, he was over 18 years old and part of the household that received the benefits. The notice informed him that he had 90 days to appeal that decision as allowed under Wis. Admin. Code § HA 3.05(3). He never appealed. Nor did he respond to a repayment agreement mailed to him on December 2, 2014, or dunning notices sent on January 5, 2015, and February 3, 2015. An administrative law judge “may limit the scope of the hearing to exclude issues...that could have been presented at a prior opportunity for hearing.” Wis. Stat. § 49.85(4)(b). Because the petitioner did not respond to the overpayment or the three subsequent notices concerning that overpayment, he cannot challenge the overpayment now.

Furthermore, the petitioner had 30 days to appeal the decision to intercept his income tax return. Wis. Stat. § 49.85(3). The department notified the petitioner on May 15, 2015, that it intended to intercept his income tax refund to recover the overpayment of FoodShare. He did not appeal until March 11, 2016, after the department actually intercepted his income tax refund. Because his appeal of the tax intercept is late, the Division of Hearings and Appeals cannot hear it.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals has no authority to consider the petitioner's appeal because that appeal is untimely.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 9th day of May, 2016

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 9, 2016.

Barron County Department of Human Services
Public Assistance Collection Unit